Maryland General Assembly
Department of Legislative Services

Emergency Regulation
State Board of Education
(DLS Control No. 18-162)

Overview and Legal and Fiscal Impact

This regulation alters income eligibility standards for participation in the Child Care Subsidy Program.

The regulation presents no legal issues of concern.

Federal fund expenditures increase beginning in fiscal 2019 as additional families become eligible for the child care subsidy (CCS) program. General fund expenditures increase in future years, likely beginning as early as fiscal 2023, as federal funds become insufficient to support the full impact of increased provider reimbursement rates (as mandated by 2018 legislation) and expanded income eligibility.

Regulation of COMAR Affected

State Board of Education:
Child and Family Day Care: Child Care Subsidy Program: COMAR 13A.14.06.03

Legal Analysis

Background

The Child Care Subsidy Program is the State's implementation of a federal program that provides matching funding to states to provide child care at a reduced cost to low–income working families. This federal program is funded through the Child Care and Development Block Grant (referred to as the Child Care and Development Fund or CCDF), created initially though the federal Child Care and Development Block Grant Act of 1990 and reauthorized in 2014 and implemented in federal regulation through 45 C.F.R. Part 98. Each lead agency from a state receiving CCDF funding must submit a plan to cover three years of administering the program. The lead agency must conduct a market rate survey, or similar analysis, to discover the rate charged for child care services and reflect variations by geographic location, category of provider, and age of the child. Lead agencies must then set payment rates for CCDF that are in accordance with the prevailing market rates for child care and health, safety quality, and staffing standards. Lead agencies must establish and periodically revise by rule a sliding fee scale for families receiving CCDF funded child care services that is, among other things, based on income and family size.

Although the program is not specifically created in current statute, various parts of the Maryland Code clearly contemplate the existence of the Child Care Subsidy Program. This is most notable in § 9.5–111 of the Education Article, which requires the State Department of Education, among other things, to perform a market rate survey or a similar analysis to set reimbursement rates for the program and, following the enactment of Chapters 563 and 564 of 2018, requires the Governor appropriate funds in an amount sufficient to allow the program to raise the reimbursement rates for each region over the next several fiscal years. Additionally, Chapter 396 of 2018, which takes effect October 1, 2018, requires that the department administer the program in accordance with federal law.

The current income thresholds for eligible participation in the program have not been updated since 2002. The department advises that the current income thresholds are "at such out–of–date low levels that thousands of low income Maryland families in dire need of childcare cannot meet the income eligibility standards." According to the department, the current income levels are 32% of State Median Income (SMI), which makes Maryland's threshold as a percentage of SMI the lowest in the nation. The department advises that the U.S. Department of Health and Human Services recommends eligibility being set at 85% of SMI, though this is the maximum allowable level for inclusion in the program (see 45 C.F.R. 98.20(a)(2)). Chapters 563 and 564 of 2018 require that the amount appropriated by the governor in each fiscal year beginning in fiscal year 2022 are sufficient to cover 65% of SMI.

Summary of Regulation

The regulation updates eligibility for the program to reflect 65% of the current SMI. The regulation retains the ten income tiers for each family size, which ranges from 1 through 10 members. The existing regulatory scheme, including existing copayment levels reflecting family income classifications and the region in which the family receives child care, are not otherwise amended by this regulation.

Legal Issues

The regulation presents no legal issue of concern.

Statutory Authority and Legislative Intent

The department cites § 2–303 and Title 9.5 of the Education Article as statutory authority for this regulation. Section 2–303(j) of the Education Article requires that the State Superintendent establish an Early Childhood Development Division within the department. Title 9.5 of the Education Article concerns the Division of Early Childhood Development. As discussed above, there is no direct statutory citation that directly establishes the Child Care Subsidy Program or that requires that the department administer the program. However, the program is discussed throughout that title and, as noted above, § 9.5–111 requires the department to conduct a market rate survey, or alternative method allowable under federal law, in formulating reimbursement rates under the program.

This authority is correct and complete. The regulation complies with the legislative intent of the law.

Emergency Status

The department requests emergency status beginning July 9, 2018 and expiring January 4, 2019. This emergency period is within the normal time frames approved by the Joint Committee on Administrative, Executive, and Legislative Review. The department indicates that emergency status is necessary to ensure that the available federal money provided to the State through CCDF are spent. The department advises that due to the low current eligibility levels, millions of dollars in appropriated CCDF funds go unspent every year; additionally, Congress has approved a 2–year budget with a large increase in CCDF funds. The department advises that an increase in the eligibility is needed to disburse this funding to otherwise eligible families in need.

Fiscal Analysis

Federal fund expenditures increase beginning in fiscal 2019 as additional families become eligible for the child care subsidy (CCS) program. General fund expenditures increase in future years, likely beginning as early as fiscal 2023, as federal funds become insufficient to support the full impact of increased provider reimbursement rates (as mandated by 2018 legislation) and expanded income eligibility.

Agency Estimate of Projected Fiscal Impact

The department estimates total expenditures of $92.2 million for the CCS program in fiscal 2019, which takes into account the higher income eligibility levels proposed in this regulation. Accordingly, expenditures increase by $1.5 million in fiscal 2019, which reflects the difference between the fiscal 2019 budgeted amount of $90.7 million and the projected expenditures. Expenditures continue to increase in future years to reflect the higher income eligibility levels as well as increased provider reimbursement rates, as required by Chapters 563 and 564 of 2018. By fiscal 2023, the department estimates total expenditures of $142.6 million for the CCS program.

Because of increased federal funding appropriated to states under the Child Care Development Block Grant (CCDBG) in federal fiscal 2018, the State has an additional $28.7 million in federal funds available for the CCS program, which the department plans to use to implement the regulation. However, the Department of Legislative Services advises that the fiscal and policy notes for Senate Bill 379/House Bill 430 (Chapters 564 and 563, respectively) also assumed that, in order to meet the required funding levels in each year to support increased provider reimbursement rates, new and existing carryover federal funds would be used. Based on projections developed by the Department of Legislative Services and using data provided by the department, even with increased federal funding to support the CCS program, it is likely that $6.0 million in general funds will be necessary by fiscal 2023; general fund expenditures likely increase by approximately $23.1 million annually thereafter. As with the fiscal and policy notes for Chapters 563 and 564, this estimate also assumes that the increased federal commitment to

CCDBG continues after federal fiscal 2019. To the extent that the availability of federal funds is less than anticipated after this fiscal year, general fund expenditures likely increase significantly beginning in fiscal 2021.

The department also advises that $16.0 million in unused federal funds from prior fiscal years remains available for expenditure. However, the Department of Legislative Services notes that, in the emergency regulation, $32.0 million in surplus funding was indicated. The department has subsequently advised that only $16.0 million remains available, as a portion of that money has been paid to providers for summer and quality enhancements and parent registration reimbursements. Due to the rapid depletion of those federal funds since the regulation was filed, this analysis does not rely on the use of any portion of those surplus funds. However, should that funding also remain available, the impact on the general fund may be less than anticipated in fiscal 2023.

Impact on Budget

There is no impact on the operating or capital budget. The fiscal 2019 budget includes $90.7 million ($47.1 million federal funds/$43.5 million general funds) to support the CCS program. As noted above, although not included in the appropriation, it is assumed that available federal funds are used.

Agency Estimate of Projected Small Business Impact

The department advises that the regulation has a meaningful economic impact on small businesses, as current providers will be able to serve additional children in their centers and homes as more families will be eligible to receive child care subsidies. The Department of Legislative Services disagrees with this assessment and assumes that, although more families will be eligible for subsidies, a significant portion of these families are already utilizing child care (and paying providers for the care). Although the impact on families is meaningful, the impact on small business providers is assumed to be minimal.

Additional Comments

The Department of Legislative Services advises that the fiscal analysis assumes that the regulation meets federal standards, specifically in regards to the requirement for states to establish by rule a sliding fee scale for families. Should the U.S. Department of Health and Human Services determine that the regulation is not in compliance with federal requirements, federal funding may be jeopardized.

Contact Information

Legal Analysis: Alistair Johnston – (410) 946/(301) 970-5350
Fiscal Analysis: Jennifer K. Botts – (410) 946/(301) 970-5510